

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054

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MAY 21 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
  
Amendments of Parts 32, 36, 61,  
64 and 69 of the Commission's Rules  
to Establish and Implement Regulatory  
Procedures for Video Dialtone Service

RM-8221  
DA 93-463

INITIAL COMMENTS OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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May 21, 1993

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Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. Sections 1.49, 1.415, and 1.419 (1992), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully files these initial comments in response to the Commission's April 21, 1993 Public Notice [DA93-463] asking for comment on the Consumer Federation of America ("CFA") and National Cable Television Association ("NTCA") April 8, 1993 Joint Petition ("Joint Petition") asking the FCC to open a proceeding to examine separations, cost accounting and cost allocation rules for video dialtone services.

NARUC reiterates and continues to support the positions taken in its December 15, 1988, January 29, 1989, February 6, 1992, and March 5, 1992 comments and October 9, 1993 reconsideration requests filed earlier in the related CC Docket No. 87-226 proceeding titled In the Matter of TELEPHONE COMPANY-CABLE TELEVISION CROSS-OWNERSHIP RULES SECTIONS 63.54 - 63.58 ("VDT Proceeding").

In those pleadings, NARUC, inter alia, urges the FCC to assure that State commissions have full authority to implement and enforce state tariffing requirements and competitive safeguards with respect to intrastate video dialtone ("VDT") services. In addition, NARUC is already on record as supporting the Joint Petition suggestion that the Commission is required to refer VDT related separations issues IMMEDIATELY to the Federal State Joint Board and supports that aspect of the Joint Petition.

Although NARUC has not had an opportunity to adopt a position specifically addressing the Joint Petition, NARUC's resolutions indicate its support for the notion of a comprehensive proceeding involving an administratively final Joint Board to develop rules and regulations concerning accounting, access charge, joint cost, joint marketing procedures, and other regulatory issues concerning implementation broadband services generally.

In support of its comments, NARUC states as follows:

#### I. BACKGROUND

The FCC initiated the VDT Proceeding by suggesting a need to modify the regulations restricting the provision of cable service by telephone companies. In March 1988, NARUC filed a telephone company-cable television cross-ownership resolution with the Commission. See NARUC Bulletin No. 10-1988, p. 18.

On September 22, 1988, the FCC released a further notice of proposed rulemaking. On December 16, 1988, NARUC responded to that notice also with comments suggesting, inter alia, that the States participate in the regulatory framework surrounding telco entry. Specifically, the States should be allowed to regulate the allocation of costs between the telcos regulated telephone service and cable television services, including the right to order structural separations where necessary. At its July 1990 meeting, NARUC adopted another resolution that, in addition to reaffirming prior positions from NARUC's 1988 resolution, specifically enumerated certain items that Congress should leave to the purview of states. Subsequently, NARUC, based upon a later March, 1992 resolution, inter alia, urged the FCC to (i) address the questions of jurisdictional separations, and cost allocations raised in conjunction with the authorization of VDT and other broadband services, (ii) require those offering VDT services for public use to offer "basic" services on a tariffed, nondiscriminatory, unbundled, common carrier basis, under an ONA framework, and where technically and economically feasible - to make "basic" VDT services universally available, (iii) to define the principles it will use to classify VDT features as "basic" or enhanced, and (iv) not take actions that would prevent state commissions from considering regulatory incentives to promote the provision of VDT and other broadband services by LEC and non-LEC service providers. The text of the March 1992 resolution is attached as Appendix A.

This resolution builds on an earlier July 1991 resolution supporting the establishment of an administratively final Federal-State Joint Board to develop rules to govern broadband implementation plans and allocated the costs of broadband infrastructure deployment between the federal and state jurisdictions.

Finally, in August of last year, the FCC issued its "Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking". That order seemed to assert exclusive FCC jurisdiction over VDT services and failed to discuss any significant cost allocation issues. NARUC immediately filed for reconsideration of the order's apparent preemption of state regulation of intrastate VDT service.

In addition, NARUC's reconsideration request also urged the FCC, irrespective of its ultimate decision on preemption matters, to refer related separations issues immediately to the Federal State Joint Board. The Joint Petition filed herein seeks similar relief.

## **II. DISCUSSION**

The Joint Petition correctly points out that when the FCC authorized video dialtone services, it left critical implementation issues unresolved.

For example, the FCC has not yet defined the principles it will use to classify VDT features as "basic" or enhanced, and, as the new Hatfield Associates study appended to the Joint Petition clearly suggests, examination of the accounting and cost allocation rules seems long overdue.<sup>1</sup>

NARUC agrees with the Joint Petition assessment concerning the need to resolve certain critical issues. Indeed, NARUC has argued since the formative stages of the FCC's VDT initiative that Section 410(c) of the Communications Act requires referral of the inherent separations issues to a Federal - State Joint Board.

As we have noted in past comments, it is clear to reach the

transmitted. To the extent that plant used for services other than video programming is jointly used to provide interstate and intrastate VDT services, the costs associated with the plant are subject to the jurisdictional separations process.

Currently, unfortunately, the rules only provide for allocations based on voice-grade minutes of use and other factors which, were not designed to compensate for, and are not applicable to, VDT service. If the FCC's preemptive pronouncements are upheld, all VDT revenues will flow to the interstate even though the service is provided over jointly used facilities. In the absence of any adjustments to these current procedures, there will be a disproportionate allocation of subscriber loop costs to the intrastate jurisdiction. Accordingly, it is clear that the FCC may not avoid jurisdictional separations, and the cost allocations issues raised by VDT and other broadband services; Section 410 of the Communications Act requires that, under these circumstances, such issues be referred to a Federal - State Joint Board. This assures that Congress' obvious goal of assuring a State voice in cost allocations involving facilities used for both inter- and intrastate traffic, is achieved.

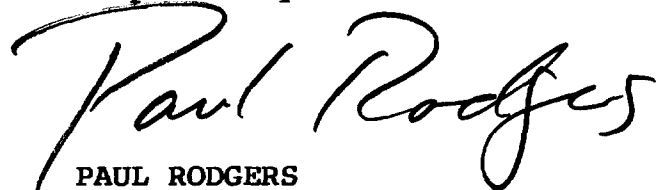
### III. CONCLUSION

The filing of four video dialtone applications requires the FCC to immediately establish a Federal-State Joint Board to determine the proportion of plant investment used jointly to

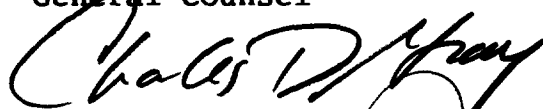
provide video and telephone service that should be allocated to each service. NARUC also supports the notion of a comprehensive proceeding involving an administratively final Joint Board to develop rules and regulations concerning accounting, access charge, joint cost, joint marketing procedures, and other regulatory issues concerning implementation broadband services generally.

NARUC respectfully requests that the Commission carefully consider the foregoing before making any decisions concerning the Joint Petition's requests.

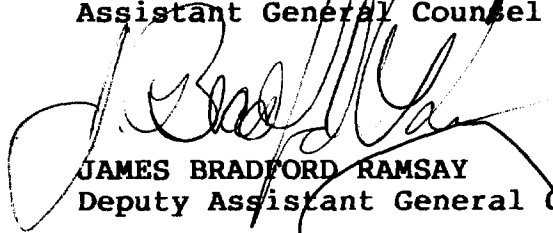
Respectfully submitted,



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National Association of



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**APPENDIX A**

**NARUC'S MARCH 1992 RESOLUTION ON VIDEO DIALTONE**

Resolution Concerning Broadband Network Development

WHEREAS, The Federal Communication Commission's proposal on video dialtone, described in its Further Notice of Proposed Rulemaking, First Report and Order, and Second Further Notice of Inquiry in CC Docket No. 87-266, could lead to the availability of alternative facilities for the distribution of video programming and other broadband services, which is intended to benefit consumers by giving them additional choices; and

WHEREAS, The NARUC considers the FCC's NPRM an important step towards making available to users valuable new broadband services that are easily-accessible, user-friendly, and widely available; and

WHEREAS, Increased competition between cable television providers and local exchange carriers for the distribution of video programming to consumers could encourage the economic deployment of advanced telecommunications technology; and

WHEREAS, The preferred method to encourage efficient broadband distribution investment is for that investment to be made to meet demand for new services where possible, using marketplace forces to decide how investment should proceed; and

WHEREAS, In its NPRM, the FCC has not endorsed a particular network architecture or technology; and

WHEREAS, Uniform national technical standards for interconnection must be in place and enforced if there is to be any possibility of multiple providers of broadband services; now, therefore, let it be

RESOLVED, That the offering of video dialtone capacity by the LECs is but one means of providing consumers with broadband capabilities and that a multi-provider telecommunications infrastructure is better able to provide customers with choice of bandwidth, and the widest array of flexible information transport capabilities; and be it further

RESOLVED, That the FCC should be commended for examining the regulatory framework under which LECs could use their networks to offer broadband services to customers; and be it further

RESOLVED, That the FCC must address the questions of jurisdictional separations, and cost allocations in conjunction with the authorization of video dialtone and other broadband services; and be it further

DISCOVER THAT PROVIDING OFFERING WIDES SPREADS COMMISSION

[REDACTED]